

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MADELEINE C. BALL,

Plaintiff,

-against-

NEW YORK CITY COUNCIL, RAMON MARTINEZ, in
his individual capacity and in his official capacity as Chief
of Staff for Council Speaker Melissa Mark-Viverito, and
WILLIAM ALATRISTE, in his individual capacity and in
his official capacity as Staff Photographer for the New
York City Council Press Office,

Defendants.
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**NOTICE OF MOTION FOR
DISMISSAL OF THE
SECOND AMENDED
COMPLAINT AND NOTICE
TO PRE SE LITIGANT WHO
OPPOSES A RULE 12
MOTION SUPPORTED BY
MATTERS OUTSIDE THE
PLEADINGS**

17 Civ. 04828 (JMF)

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law dated February 13, 2018; and upon all papers and proceedings had herein, Served Defendants the New York City Council, Ramon Martinez and William Alatraste in their official capacities, will move this Court, before the Honorable Jesse M. Furman, United States District Judge, on a date and at a time to be designated by the Court, at the United States Courthouse for Southern District of New York, located at 40 Foley Square, New York, New York, 10007, for an Order, pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing plaintiff's Fair Labor Standards Act claim for lack of standing and failure to state a claim upon which relief may be granted, dismissing Plaintiff's New York Labor Law Claim for failure to state a claim upon which relief may be granted, and dismissing Plaintiff's New York Contract Law claim for failure to state a claim upon which relief may be granted, and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and Rule 12.1 of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York, Served Defendants, by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, hereby notify the Plaintiff that:

1. The defendants in this case have moved to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, and have submitted additional written materials. This means that the defendant has asked the Court to decide this case without a trial, based on these written materials. You are warned that the Court may treat this motion as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. For this reason, **THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION ON TIME** by filing sworn affidavits as required by Rule 56(c) and/or other documents. The full text of Rule 56 of the Federal Rules of Civil Procedure is attached as Appendix A.

2. In Short, Rule 56 provides that you may NOT oppose the defendant's motion simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising specific facts that support your claim. If you have proof of your claim, now is the time to submit it. Any witness statements must be in the form of affidavits. An affidavit is a sworn statement of fact based on personal knowledge stating facts that would be admissible in evidence at trial. You may submit your own affidavit and/or the affidavits of others. You may submit affidavits that were prepared specifically in response to Defendants' motion.

To: Madeleine C. Ball (Via Regular Mail)
25-61 34th St., Apt. 1
Astoria, NY 11103